

## **New York 2005 Legislative Initiatives and Sample Language**

### **The Need for 45-Day Ballot Transit Time**

The most persistent problem which continues to face New York military and overseas voters is the extremely short period of time these voters have to receive, vote, and return their absentee ballots in order to be counted. While electronic transmission of election materials offers an alternative to inadequate ballot transit time in emergency situations, the fact is that insufficient ballot transit time through the mail remains the primary obstacle to ensuring timely delivery of absentee ballots to all who request them. Our post-election surveys and Postal Service statistics indicate that a **45-day transit time is needed** for absentee ballots sent through international mail or the military APO/ FPO (overseas) post offices. This round trip transit time is especially necessary because of the remote location of many military personnel and overseas citizens such as sailors and marines aboard ship, airmen and sailors at isolated tracking sites around the world, as well as Department of State personnel and citizen employees of American multinational corporations in remote areas. This is why it is necessary to allow a minimum of 45 days transit time for absentee ballots.

### **Sample Language**

*For all elections, the official charged with the printing and distribution of ballots and election materials shall print as many absentee ballots as may be necessary as soon as possible after receiving the information concerning candidates and measures to be voted on at an election, and balloting materials shall be mailed not later than the 45th day before the election.*

### **Late Registration Procedures**

We recommend that **New York allow persons recently separated from the Uniformed Services or overseas employment, and their family members, to be able to register late or be exempt from registration.** Many members of the Uniformed Services and overseas citizens go through a transition period when they first leave the Uniformed Services or overseas employment and may reside in your state just prior to an election. This time frame does not meet your state's normal residency requirements. Often, the date of discharge or termination of overseas employment and a state's registration requirement combine to disenfranchise a discharged military member or overseas citizen returning home after employment abroad. Special procedures to allow these persons to register and vote would solve this problem. Twenty-six states currently allow such procedures.

### **Sample Language**

*An individual, or accompanying family member, who has been discharged or separated from the Uniformed Services or from employment outside the territorial limits of the United States, too late to enable him or her to register by the regular state deadline for registration, shall be entitled to register for the purpose of voting at the next ensuing election after such discharge, separation, or termination of employment.*

## **State Write-In Absentee Ballot**

We also recommend that New York provide a state write-in absentee ballot for all elections. The purpose of the state write-in absentee ballot is to **provide a method for voting by military and other persons overseas who, due to military contingencies or special circumstances such as those faced by submariners, Peace Corps volunteers, missionaries or others in remote areas, will be out of communication for extended periods of time and unable to receive the regular ballot from your state in the normal time frame.** A voter could request a state write-in absentee ballot 90 days in advance and write in the names of the candidates or party preferences. The voter knows in advance that he or she will not be able to receive, vote, and return the regular ballot from the state in time to be counted. Twenty-seven states now provide state write-in absentee ballots.

This state write-in absentee ballot should not be confused with the Federal Write-In Absentee Ballot (FWAB) that is prepositioned at Embassies and Consulates, military installations, overseas organizations and corporations. In comparison, the FWAB is generally only available to military stationed overseas and overseas citizens who have already applied for a regular ballot from the state. They do not know in advance that they need the FWAB. However, if the regular ballot from the state does not arrive in sufficient time for the voter to return the voted ballot and meet the state deadline, these voters may obtain, vote, and return the FWAB to the local election official.

It is also important to note that a state write-in absentee ballot usually provides a “full” slate of offices to be voted upon including Federal, state, and local offices. On the other hand, the FWAB generally allows voting only for Federal offices. There are presently nine states that have expanded the use of the FWAB beyond Federal law. The 1995 revised FWAB was designed to accommodate its use beyond the general election and Federal offices only.

## **Sample Language**

*If the voter is a U.S. citizen residing outside the United States or a member of the United States Uniformed Services, merchant marine, or family member and a qualified elector, he or she may request, not earlier than 180 days before an election, a state write-in absentee ballot. The voter must submit with the request a statement that provides that due to military or other contingencies that preclude normal mail delivery, the elector cannot vote an absentee ballot during the normal absentee voting period. The ballot will be available 90 to 180 days before the election.*

## **Reference to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) in the State Election Code**

In 1986, Congress updated and consolidated the provisions of the *Federal Voting Assistance Act of 1955* and the *Overseas Citizens Voting Rights Act of 1975* into the *Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)*. **Reference to UOCAVA in the New York election**

**code** will help election officials and interested citizens find guidance to applicable Federal law and increase their familiarity with the statute and its application.

### **Sample Language**

This language is usually found under the chapter in the New York Election Code that makes reference to Federal elections:

*It is the intent and purpose of this Legislature that the provisions set forth in this chapter are designed to facilitate the Federal mandate of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA, 42 U.S.C. 1973 ff et. seq.).*

### **Electronic Transmission of Election Materials**

Since the 1990 general election, faxing has proven to be a valuable alternative method for facilitating the enfranchisement of military persons and overseas citizens serving their country who may have otherwise been unable to vote. This initiative has helped to ensure that these citizens were not disenfranchised by allowing them to cast a ballot when they would not otherwise have been able to vote due to time and location constraints. Currently, forty-nine states allow electronic transmission of election materials.

Throughout an election year cycle, various circumstances exist that require the need for this alternative procedure in order for citizens to vote. The basic concept of electronic transmission of election materials is to secure high-speed delivery of election materials to and from the voter and local election officials. We enlist your support once again this year in developing the **acceptance of electronic transmission for all parts of the process**. With proper controls, this would cut the ballot transit time at least in half, reduce the major obstacle to voting absentee and allow local election officials more administrative flexibility in preparing election materials.

Please consider using modern technology in the absentee voting process. We encourage the use of this alternative to include the **electronic transmission of the FPCA for registration and ballot request, the blank ballot to the voter, and the voted ballot from the voter** where circumstances would otherwise disenfranchise a citizen.

### **Sample Language**

*An applicant who is a member of the United States Uniformed Services, merchant marine, a family member, or a qualified elector living outside the United States, may apply for registration and an absentee ballot by electronic transmission if otherwise qualified to apply for and vote by absentee ballot. A county board of elections official may receive absentee ballot applications, send blank ballots and accept voted ballots from eligible electors via electronic transmission.*

### **Expand Use of Federal Write-In Absentee Ballot**

Currently the Federal Write-In Absentee Ballot (FWAB) may be used only in general elections for Federal offices only. This ballot is prepositioned worldwide at Embassies and Consulates,

military installations and overseas organizations and corporations with American membership. By **expanding its use to include special, primary and runoff elections for Federal offices**, citizens would not be disenfranchised because regular ballots are not received in a timely manner. Frequently, there is insufficient time between the call for a special election and the actual election and between primary and runoff elections. Allowing use of the FWAB in these elections would reduce the possible need for legal action when insufficient time exists for the ballot to be received, voted and returned to be counted. During past primaries, on an *ad hoc* basis, several states and jurisdictions allowed the FWAB to be used for offices other than Federal offices. Eleven other states have legislatively expanded its use beyond the Federal law.

In addition, for those citizens that desire to vote in elections for Federal office only, the acceptance of the FWAB transmission envelope as **a request for registration simultaneously with the submission of the FWAB** would further simplify the process, improve on transit time and help ensure enfranchisement. It should be noted that the information requested on the FWAB transmission envelope is basically the same as the information requested from the voter on the Federal Post Card Application (FPCA). We recommend the FWAB transmission envelope and FWAB be accepted simultaneously as a registration form and ballot by the state for general elections and Federal offices if:

- (1) the information submitted complies with the state's registration requirements;
- (2) the voter is otherwise eligible to vote absentee in the jurisdiction where the request is submitted;
- (3) the request is received by the appropriate state election official not less than 30 days before the election or the state deadline, whichever is later.

The adoption of this initiative would save the state money and alleviate administrative responsibilities on the part of the local election official.

### **Sample Language**

- Expanded use of the FWAB:

*If the voter is residing outside the United States or a member of the United States Uniformed Services, merchant marine, or a family member, and a qualified elector, he or she may use the Federal Write-In Absentee Ballot in general, special, primary, and run-off elections for local, state and Federal offices.*

- Use of FWAB as a Combined Request for Registration and Ballot Submission:

*If the voter is residing outside the United States, or is a member of the United States Uniformed Services, merchant marine, or a family member, and a qualified elector, he or she may use the Federal Write-In Absentee Ballot (FWAB) transmission envelope as a request for registration simultaneously with the submission of the FWAB if:*

- (1) *the information submitted complies with the registration requirements of the*

*state;*

- (2) the voter is otherwise eligible to vote absentee in the jurisdiction where the request is submitted; and*
- (3) the request is received by the appropriate state election official not less than 30 days before the election or the state deadline, whichever is later.*

### **Emergency Authority for Chief Election Official**

During a period of a declared emergency or other situation where there is a short time frame for ballot transmission, it is recommended that New York's **Chief Election Official (CEO) have the authority in law to designate alternate methods for handling absentee ballots** to ensure voters have the opportunity to exercise their right to vote. The CEO and the Federal Voting Assistance Program could mutually establish expeditious methods for handling absentee ballots including electronic transmission.

### **Sample Language**

*If a national or local emergency or other situation arises which makes substantial compliance with the provisions of the Uniformed and Overseas Citizens Absentee Voting Act impossible or unreasonable, such as a natural disaster or an armed conflict involving United States Armed Forces, or mobilization of those forces, including State National Guard and Reserve components, the Chief Election Official may prescribe, by emergency orders or rules, such special procedures or requirements as may be necessary to facilitate absentee voting by those citizens directly affected who otherwise are eligible to vote in the state. The Chief Election Official shall adopt rules describing the emergency powers and the situations in which the powers will be exercised.*